

Panaji, 6th February, 2025 (Magha 17, 1946)

SERIES II No. 45

OFFICIAL GAZETTE

GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There are two Extraordinary issues to the Official Gazette, Series II No. 44 dated 30-01-2025 as follows:

- (1) Extraordinary dated 30-01-2025 from pages 943 to 944 regarding Notice of Election and Public Notice from Department of Panchayati Raj and Community Development.
- (2) Extraordinary (No. 2) dated 31-01-2025 from pages 945 to 946 regarding Notification from Department of Finance.

GOVERNMENT OF GOA

Department of Civil Supplies and Consumer Affairs

Order

No. DCS/EST/1-25/2024-25/3075

In exercise of the powers conferred under sub-section (1) of Section (4) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Central Act No. 14 of 2013, the undersigned is pleased to re-constitute Internal Complaint Committee for all the Taluka Civil Supplies Offices of the Department of Civil Supplies and Consumer Affairs. The composition of the Internal Complaints Committee shall be as under:-

Name of post	Pernem Sub-office & Godown	Bardez Sub-office & Godown	Tiswadi Sub-office & Godown
1	2	3	4
Presiding Officer	Deepa Fulari, ADCS	Deepa Fulari, ADCS	Shrishti Vaigankar, ADCS
Member-1	Varsha Rane, S.I.	Riya Sawant, S.I.	Nidhi Madkaikar, S.I.
Member-2	Bhanu Goltekar, ADCS	Bhanu Goltekar, ADCS	Purva Prabhu, Insp.
NGO Member	Amita Salatry	Amita Salatry	Amita Salatry

Name of post	Bicholim Sub-office & Godown	Sattari Sub-office & Godown	Salcete Sub-office & Godown
1	2	3	4
Presiding Officer	Sejal Satardekar, Insp.	Sejal Satardekar, Insp.	Sarita Morajkar, Insp.
Member-1	Nakshita Mapari, LDC	Sneha Sawaikar, UDC	Sweta Chari, LDC
Member-2	Purva Prabhu, Insp.	Bhanu Goltekar, ADCS	Gorakh Rajadhayx, Insp.
NGO Member	Amita Salatry	Amita Salatry	Amita Salatry

Name of post	Mormugao Sub-office & Godown	Quepem Sub-office & Godown	Canacona Sub-office & Godown
1	2	3	4
Presiding Officer	Sarita Morajkar, Insp.	Pooja S. Naik Gaonkar, ADCS	Pooja S. Naik Gaonkar, ADCS
Member-1	Sweta Chari, LDC	Akshaya Faldessai, S. I.	Akshaya Faldessai, S.I.
Member-2	Gorakh Rajadayx, Insp.	Pranali Sawardekar, LDC	Vaishnavi Sawant, LDC
NGO Member	Amita Salatry	Amita Salatry	Amita Salatry

Name of post	Sanguem Sub-office & Godown	Ponda Sub-office & Godown	Dharbandora Sub-office & Godown
1	2	3	4
Presiding Officer	Akshaya Faldessai, S.I.	Priya Gaonkar, Insp.	Priya Gaonkar, Insp.
Member-1	Pallavi Gaonkar, S.I.	Vaishnavi Sawant, LDC	Seema Gaude
Member-2	Gorakh Rajadhyayx, Insp.	Purva Prabhu, Insp.	Purva Prabhu, Insp.
NGO Member	Amita Salatry	Amita Salatry	Amita Salatry

The Internal Complaints Committee shall work as per the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

This Internal Complaint Committee will be in force for a period of three years, w.e.f. the date of this Order.

Jayant G. Tari, Director (Civil Supplies and Consumer Affairs) & ex officio Joint Secretary.

Panaji, 28th January, 2025.



Department of Environment & Climate
Change

Department of Finance
(Revenue & Control) Division

Notification

No. 3-1-2024/GSBB/NBA/795/2004

Government hereby appoints Secretary (Environment & Climate Change) as a Adjudicating Officer under Section 55A (1) of Biological Diversity Act, 2002 amended in the year 2023 for the purpose of determining penalties under Section 55 to hold inquiry in the prescribed manner and to impose the penalty so determined.

Kindly ignore earlier Notification No. 3-1-2024/GSBB/NBA/795/1974 dated 23-01-2025.

By order and in the name of the Governor of Goa.

Sachin S. Desai, Director/ex officio Jt. Secy.
(Environment & Climate Change).

Panaji, 30th January, 2025.

Order

No. CCT/1-4/2024-25/Conf./27504

On the recommendation of the Departmental Promotional Committee as conveyed by the Goa Public Service Commission vide their letter No. COM/II/11/43(1)/2019/393 dated 30-01-2025, Smt. Sandhya R. Kamat, Assistant State Tax Officer in the Office of the Commissioner of Commercial Taxes is hereby promoted to the post of State Tax Officer (Group 'B' Gazetted) in the pay matrix Level-7 of the 7th Pay Commission on regular basis with immediate effect.

The above Officer shall be on probation for a period of two years from the date of joining. She shall report to the Commissioner of Commercial Taxes, Panaji for her posting.

She shall exercise option for fixation of pay in the promotional post within a period of one month from the date of issue of the Order.

By order and in the name of the Governor of Goa.

Pranab G. Bhat, Under Secretary, Finance (R&C).

Porvorim, 3rd February, 2025.

Order

No. CCT/1-4/2024-25/Conf./27490

On the recommendation of the Departmental Promotional Committee as conveyed by the Goa Public Service Commission vide their letter No. COM/II/11/43(1)/2019/393 dated 30-01-2025, the following Assistant State Tax Officers in the Office of the Commissioner of Commercial Taxes are promoted to the post of State Tax Officer (Group 'B' Gazetted) in the pay matrix Level-7 of the 7th Pay Commission on regular basis with immediate effect:-

Sr. No.	Name of the Officer
1.	Smt. Sunita A. Naik.
2.	Smt. Sukanti Pilgaonkar alias Vinita V. Madkaikar (ST).
3.	Smt. Vinita V. Kamat.
4.	Smt. Laxmi Lawande alias Anchal A. Valvaikar.
5.	Shri Subhash Gurav.
6.	Shri Atish Mandrekar.
7.	Smt. Vandana S. Ghaisas.
8.	Shri Amey P. Naik.

The above Officers shall be on probation for a period of two years from the date of their joining. They shall report to the Commissioner of Commercial Taxes, Panaji for their posting.

They shall exercise option for fixation of pay in the promotional post within a period of one month from the date of issue of the Order.

By order and in the name of the Governor of Goa.

Pranab G. Bhat, Under Secretary, Finance (R&C).
Porvorim, 30th January, 2025.

Goa Human Rights Commission

Before the Goa Human Rights Commission
Panaji-Goa

Proceeding No. 117/2024

Peter Fernandes,
H. No. 333/R, Uzro,
Camorlim, P.O. Raia,
Salcete-Goa 403720

..... Complainant.

V/s

The Principal Chief Engineer,
Public Works Department,
Altinho, Panaji-Goa

..... Respondent.

INQUIRY REPORT

(27th August, 2024)

The complaint dated 05-06-2024, was received in the Commission in respect of the recovery from his gratuity on his retirement.

2. On perusing the complaint, the Commission by Order dated 25-06-2024, issued notice to the Respondent for filing their reply.

3. Reply dated 17-07-2024, was filed by the Respondent.

4. Arguments of the Complainant were heard in person and of Shri Sandip Phadte, U.D.C. on behalf of the Respondent.

5. The Commission has gone through the complaint, the documents attached thereto, the reply of the Respondent and has considered the submissions of the respected Parties and the law on the subject.

6. The Complainant was appointed as a Draughtsman by the Public Works Department, Government of Goa and joined his duties on 16-10-1987 and retired on 31-03-2024. On his pension papers being sent to the Directorate of Accounts on 05-07-2023, the same were returned back with the observation mentioning that he was given an extra increment in the year 2006 and they had asked to recover the amount of Rs. 3,20,061/- (Rupees three lakhs twenty thousand and sixty one only) from his retirement gratuity benefits. As such, he approached this Commission for refund of the amount deducted for no fault of his.

7. The Respondent in their reply has stated that after the pension case was submitted to the Directorate of Accounts, they had pointed out that the pay of the Complainant fixed on 01-01-2006 was incorrect.

8. Accordingly, the Respondent re-fixed his pay as on 01-01-2006. They stated that the Complainant retired with effect from 31-03-2024 and recovery amount of Rs. 3,20,061/- was effected from his retirement gratuity and Rs. 3608/- was paid vide challan dated 03-01-2024.

9. There is the Judgment of the High Court of Bombay at Goa in the case of **Jotiba Ishwar Mali vs the State of Goa and others, Writ Petition No. 285 of 2024**, decided by the Oral Judgment dated 03-04-2024.

10. The above case of **Jotiba Ishwar Mali (supra)** was a case where an excess payment of Rs. 4,18,633/- was recovered from the Petitioner after his retirement on the ground that this amount was

wrongly paid to him. The High Court held that the excess payment was not due to any misrepresentation by the Petitioner and it was because of an error on the Respondents' part and further held as under:-

"6. Before such recovery, the principles of natural justice and fair play were not complied with. Besides, such recovery was contrary to the principles the Hon'ble Supreme Court laid down in the cases of the State of Punjab vs Rafiq Masih, A.I.R. 2015 SC 696 and Thomas Daniel vs State of Kerala and others, 2022 SCC Online SC 536.

7. Both the above referred decisions hold that where monetary benefits were given to the employees in excess of their entitlement due to unintentional mistakes committed by the concerned competent authorities in determining the emoluments payable to them and the employees were not guilty of furnishing any incorrect information/misrepresentation/fraud, which had led the concerned competent authorities to commit the mistake of making the higher payment to the employees, no recoveries must be ordered or enforced after the retirement of such employees. In fact, the direction was not to recover from the retired employees or the employees who were due to retire within one year of the order of recovery.

8. Mr. Naik pointed out that the Central Government has issued an Office Memorandum dated 02-03-2016 following the law laid down in Rafiq Masih (supra). By the Office Memorandum dated 07-03-2017, the Government of Goa has also adopted the Central Government's OM dated 02-03-2016."

11. Guided by the above Judgments, the Commission finds that the Respondent could not have recovered the excess payment from his retirement gratuity, as the excess payment was not due to any mistake of the Complainant.

12. In the present case, the Complainant had retired on 31-03-2024 and just two months prior to his retirement i.e. on 03-01-2024, the amount of Rs. 3,20,061/- was recovered from his retirement gratuity.

13. Guided by the Judgment of the High Court of Bombay at Goa (supra), in the facts of the present case, the Commission finds that the Respondent could not have recovered the said overpayment of Rs. 3,20,061/- from the gratuity amount of the Complainant about two months before his retirement and without notice to him and it is not the case of the Respondent that the excess payment was due to any misrepresentation by the Complainant.

14. Accordingly, the Commission recommends that the Respondent shall refund the recovered amount of Rs. 3,20,061/- (Rupees three lakhs twenty thousand and sixty one only) to the Complainant as expeditiously as possible and, in any case, not later than 60 days from today. If this amount is not paid to the Complainant within 60 days from today, it will carry interest at the rate of 8% per annum beginning from the date of this order until the date of payment.

15. Under Section 18(e) of the Protection of Human Rights Act, 1993, the Commission shall send a copy of the Inquiry Report together with its recommendations to the concerned Government or authority and they shall, within a period of one month or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken, to the Commission.

16. Copy of the Inquiry Report be sent to the Respondent, calling for their comments, including the action taken or proposed to be taken within a period of 60 days or on or before 28-10-2024, in terms of Section 18(e) of the Protection of Human Rights Act, 1993.

Sd/-

(Desmond D'Costa)
Acting Chairperson/Member,
Goa Human Rights Commission.

Sd/-

(Pramod V. Kamat)
Member,
Goa Human Rights
Commission.

Panaji, 27th August, 2024.

No. PWD/SEVIII(PHE)/Adm/P.46/2024-25/239
Government of Goa,
Office of the Superintending Engineer,
Circle Office VIII (PHE-S),
PWD, Fatorda, Margao-Goa

Dated: 05/12/2024

To,
The Chairperson,
Goa Human Rights Commission,
Old Education Building, 1st floor,
Panaji - Goa.

Sub: Inquiry Report/Order dated 27/08/2024 in Proceeding No.117/2024.

Sir/Madam,

With reference to above subject, it is to inform you that this Circle Office had sent the file to O/o the Principal Chief Engineer, P.W.D., Altinho, vide Note No. PWD/SEVIII(PHE)/Adm/P.46/2024-25/174 dated 09/10/2024.

Further it is to inform you that from O/o the Principal Chief Engineer, PWD, Altinho, file was sent to Finance Department for approval with Round No. 1567/2024/PCF-PWD dated 18/10/2024.

Whereas the approval of the Finance Department (R&C), is hereby conveyed to refund recovered amount of Rs.3,20,061/- (Rupees Three Lakhs Twenty Thousand and Sixty one only) to Shri Peter Fernandes Ex. Draughtsman Gr-I, vide their U.O.1400103451 dated 21/11/2024.

Now the bill has been prepared by this office and sent to Directorate of Accounts, South branch, Margao vide Bill No.NG-123 dated 02/12/2024 (copy of G.F.R. 8 & copy of E.C.S. enclosed).

Yours faithfully'

(Narayan S. Thyrenkar)
Superintending Engineer,
C.O.VIII PWD

Copy to: The Principal Chief Engineer, P.W.D., Altinho, Panaji.

Goa Legislature Secretariat

Order

No. LA/Admn./2025/2736

In pursuance of Rule 4(2) of the Goa Legislature Secretariat (Recruitment and Conditions of Service) Rules, 1988, the Governor in consultation with the "BOARD" is pleased to promote Shri Eknath U. Sawant, Public Relation Officer of the Goa Legislature Secretariat, Porvorim to the post of Committee Officer, Group 'A' (Gazetted) in the Pay Matrix Level-10, on regular basis with immediate effect.

2. The said promotion is made against the post of Committee Officer caused due to retirement of Shri Uday D. Bicholkar, Committee Officer on superannuation.

3. Shri Eknath U. Sawant, will be on probation for a period of two years from the date of his appointment.

4. The pay of Shri Eknath U. Sawant, shall be fixed as per the rules.

5. The expenditure on account of this be debited to the Budget Head "2011—Parliament/State/ /U.T. Legislature; 02—State/U.T. Legislature; 103—Legislative Secretariat; 01—Legislature Secretariat of State; 01—Salaries."

By order and in the name of the Governor of Goa.

Mohan J. Gaonkar, Under Secretary, Legislature.
Porvorim, 24th January, 2025.

Department of Information & Publicity

Order

No. DI/INF/ADMN/2 (27)/80/2015/2020/PF-II/4/
/24-25/2925

On the recommendation of the Goa Public Service Commission vide letter No. COM/II/11/26 (1)/2024/162 dated 02-08-2024, the Government is pleased to promote Shri Kiran B. Munankar, Assistant Information Officer to the post of Information Officer (Group 'B' Gazetted) in the pay level 7 on regular basis w.e.f. 05-08-2024 i.e. date of joining for the post of Information Officer.

The above officer is promoted against the vacancy caused upon superannuation of Shri Prakash Naik, Information Officer.

He may exercise an option if so desire within one month from the date of issue of the order for fixing the pay.

The expenditure on his pay and allowance should be debited to Budget Head: Demand No. 56 2220—Information & Publicity; 01—Films; 001—Direction & Administration; 01—Department of Information & Publicity (NP); 01—Salaries.

This supersedes earlier Order No. DI/INF/ADMN/ /2 (27)/80/2015/2020/PF-II/4/24-25 dated 05-08-2024.

By order and in the name of the Governor of Goa.

Dipak M. Bandekar, Director (Information & Publicity) & ex officio Addl. Secretary.

Panaji, 9th October, 2024.

Department of Labour

Order

No. 28/79/2024-LAB/68

Whereas, the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Himgiri Casting Private Limited, Plot No. 291, Kundaim Industrial Estate, Kundaim, Goa and it's Workmen, represented by the Gomantak Mazdoor Sangh, in respect of the matter specified in the Schedule hereto;

And whereas, the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa hereby refers the said dispute for adjudication to the Industrial Tribunal of Goa at Panaji-Goa, constituted under Section 7 A of the said Act.

SCHEDULE

- (1) Whether the action of the management of M/s. Himgiri Casting Private Limited, Plot No. 291, Kundaim Industrial Estate, Kundaim, Goa, in not allowing the workers to work on 30-03-2024 i.e. on working day and forcing the workers to work on 28-04-2024 i.e. on weekly off day and without paying overtime wages, is legal and justified?
- (2) If not, what relief the Workmen are entitled for?

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).

Porvorim, 27th January, 2025.

Order

No. 28/77/2024-LAB/73

Whereas, the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. VPK Krishi Sahakari Kharedi Vikri Prakriya Sauntha Maryadit, Mardola, Goa and it's Workmen, represented by the Goa Trade and Commercial Workers Union, in respect of the matter specified in the Schedule hereto;

And whereas, the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa hereby refers the said dispute for adjudication to the Industrial Tribunal of Goa at Panaji-Goa, constituted under Section 7A of the said Act.

SCHEDULE

- (1) Whether the action of the management of M/s. VPK Krishi Sahakari Kharedi Vikri Prakriya Sauntha Maryadit, Mardola, Goa, in refusing employment to Mrs. Neeta Jalmi, Packer-cum-Helper, Mrs. Kamlavati Naik, Packer-cum-Helper, Mrs. Hashvita Naik, Packer-cum-Helper and Shri Madhu Gaude, Peon, with effect from 01-10-2024, is legal and justified?

- (2) If not, to what relief the Workmen are entitled?

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).

Porvorim, 28th January, 2025.

Order

No. 28/45/2024-LAB/76

Whereas, the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Putzmeister Concrete Machine Private Limited, Plot No. N4, Phase 4, Verna Industrial Estate, Verna, Salcete, Goa and it's Workman, Shri Somnath Acharekar, in respect of the matter specified in the Schedule hereto;

And whereas, the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa hereby refers the said dispute for adjudication to the Labour Court-II of Goa of Panaji-Goa, constituted under sub-section (1) of Section 7 of the said Act.

SCHEDULE

- (1) Whether the action of management of M/s. Putzmeister Concrete Machine Private Limited, Plot No. N4, Phase 4, Verna Industrial Estate, Verna, Salcete, Goa, in dismissing, Shri Somnath Acharekar, with effect from 27-09-2023, is legal and justified?
- (2) If not, to what relief the Workman is entitled?

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).

Porvorim, 28th January, 2025.

Order

No. 28/50/2024-LAB/77

Whereas, the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Putzmeister Concrete Machine Private Limited, Plot No. N4, Phase 4, Verna Industrial Estate, Verna, Salcete, Goa and it's Workman, Mr. Azaruddin Lanjekar, in respect of the matter specified in the Schedule hereto;

And whereas, the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa hereby refers the said dispute for adjudication to the Labour Court-II of Goa at Panaji-Goa, constituted under sub-section (1) of Section 7 of the said Act.

SCHEDULE

- (1) Whether the action of management of M/s. Putzmeister Concrete Machine Private Limited, Plot No. N4, Phase 4, Verna Industrial Estate, Verna, Salcete, Goa, in dismissing, Mr. Azaruddin Lanjekar, with effect from 27-09-2023, is legal and justified?
- (2) If not, to what relief the workman is entitled?

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).

Porvorim, 28th January, 2025.

Notification

No. 28/02/2024-LAB/4

The following Award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 17-12-2024 in Case No. Appln.06/2021 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Amalia O. F. Pinto, Under Secretary (Labour).

Porvorim, 2nd January, 2025.

IN THE INDUSTRIAL TRIBUNAL AND LABOUR COURT GOVERNMENT OF GOA AT PANAJI

(Before Mrs. Vijayalaxmi Shivolkar, Hon'ble Presiding Officer)

Case No. Appln.06/2021

Mr. Ajit Shirodkar,
House No. 306/3,
Danda, Near Jagreshwar Temple,
Siolim, Bardez-Goa Applicant/Party-I.

V/s

M/s. Whispering Palms Beach Resort,
Sinquerim Beach,
Waddy, Candolim,
Bardez-Goa. Opponent/Party II.

Workmen/Party I represented by Learned Advocate
Shri A. Kundaikar.

Employer/Party II represented by Learned Adv. Shri
Akshay Shirodkar.

AWARD

**(Delivered on this the 17th day of the month of
December of the year 2024)**

The Applicants/Party I have filed this application under Section 2A (2) seeking for adjudication of the existing dispute between the Management of M/s. Whispering Palms Beach Resort and the Applicant/Party I in the matter of termination of the Applicant Shri Ajit Shirodkar.

2. In brief, it is the case of the Applicant/Party I that he was employed with Opponent/Party II vide Appointment Letter dated 24-12-1993 as a 'Time Keeper'. His salary was revised from time to time and the designation was also changed from time to time, however, the service rendered by him was the same. During his service of 25 years with the Opponent, he was not issued any memorandum or a charge-sheet and had an honest and unblemished service record. His last drawn salary was Rs. 33,530/-.

3. On 28-09-2021 the Applicant was issued with the Termination Letter by the Opponent/Party II terminating his services w.e.f. 23-09-2021 in accordance with Contract of Service when infact no Service Contract was applicable to him. The Applicant was governed under Shops and Establishment Act. No departmental inquiry was held before terminating his services. No charge-sheet was issued. No any departmental inquiry was conducted before terminating him from the services. The termination of service therefore, was in violation of principles of natural justice, claimed the Applicant.

4. It is further his case that he was not discharging any supervisory duties and was discharging the duties as per the instruction of the higher authority and had to report to HR-Manager. The Applicant did not sanction any leave to any of the Staff and his leave was sanctioned by the HR-Manager. The Applicant mostly conducted duties such as renewal of vehicle, passing of vehicles before RTO Office, payment of taxes, renewal of licence of vehicles, Food and Drugs weights and measures and most of the duties were outside the

hotel premises. It is further submitted that this application u/s 2A(2) has been filed after 45 days of filing of the application before the Conciliation Officer for adjudication of the dispute referred therein. The Applicant is unemployed since the illegal termination of his services by the Opponent/Party II and is ready and willing to join his duty with the Opponent/Party II.

5. In the Written Statement, the Opponent/Party II raised preliminary objections stating that the Applicant is not a 'workman' or 'employee' covered under the provisions of the Industrial Disputes Act, 1947, he being a Sr. HR-Executive in the Human Resource Department of the Opponent/Party II. That the nature of services conducted by him were purely of managerial in nature. The second preliminary objection is that the application by the Applicant u/s 2A(2) is not maintainable, same being premature and without following the mandatory requirements before filing the same.

6. On merits, it is stated that the Applicant was appointed in the services of the Opponent/Party II in the lowest Managerial Cadre Grade-VI and given periodic increments in the salary w.e.f. from 01-04-1995 till 21-11-2005. From 01-10-2006, the Applicant was promoted in the Management Cadre as a Junior HR-Executive and was paid gross salary of Rs. 6,880/-. He was given the letter of appointment under promotion by which he accepted the terms of his employment. That by letter dated 10-07-2007, the Applicant accepted the terms and conditions stated therein and accordingly was promoted to the post of Sr. HR-Executive and was paid total salary of Rs. 8,108/- in addition to other allowances.

7. As a Sr. Human Resource Executive, the Applicant was assigned responsibilities in terms of summary which was from time to time updated for various managerial positions in the establishment. The position summary for the post of Sr. Human Resource Executive was last updated and the duties and responsibilities assigned to the Applicant set out therein as a job description which was communicated to the Applicant in writing on 19-08-2021. The Opponent states that according to the Position Summary, the Applicant was responsible for supporting the operations of the HR Team on day-to-day basis by executing the establishment's Talent Development Strategy and by implementing the hotel training programmes and was also assigned duties more specifically worded in the said written communication dated 19-08-2021.

8. It is further stated that the list of duties as referred in the said Written Communication are not

exhaustive but the Applicant was required to perform the duties as the one as that of managerial cadre and not as a 'workman'. The Certified or Model Standing Order therefore did not apply to the Applicant as he was not a 'workman'. The Opponent/Party II issued to the Applicant at his request a Salary Certificate dated 19-08-2019 specifically stating that he is working as a Sr. Executive in the Human Resource Department and drawing a gross salary of Rs. 33,530/-. The said Salary Certificate was signed by the Asst. Manager.

9. It is further the case of the Opponent/Party II that the Applicant was issued a Performance Appraisal dated 19-08-2021. In the reply filed to the same, the Applicant denied of him having committed any act of misconduct or denied being indulged in the acts of indiscipline or being impolite. The Opponent/Party II further states as per the Leave Record of the Applicant, he was on paid leave for the period from 15th April to 10th July, 2021 and was on unpaid leave from 11th July to 16th August, 2021. When called to join duty on 17-08-2021, the Applicant did not report back for work or gave any explanation for his unauthorized absence from duty nor did he regularize his leave or his absence from duty. The Applicant also did not give any explanation for remaining away from work without prior approval when he was issued Performance Appraisal dated 19-08-2021.

10. It is further stated that continuous and unauthorized absence of the Applicant disrupted the smooth functioning of the Human Resource Department and was considered as an act subversive of discipline. As such, the Management decided to terminate the services of the Applicant and accordingly his services were terminated by notice dated 28-09-2021. It is further stated that on termination of services, the Applicant was tendered his full and final settlement dues and other terminal benefits by the Opponent/Party II totaling to Rs. 4,94,773/-. It is submitted that the Opponent realized that there was an error in calculating the dues and the amount due to the Applicant was Rs. 5,78,293/- which the Opponent/Party II was ready to pay by depositing the same before this Tribunal or is willing to hand over the cheques to the Applicant without prejudice to their contentions that this Tribunal lacks jurisdiction to decide the present matter.

11. The Opponent/Party II accepted the Applicant having raised the dispute before the Commissioner, Labour and Employment regarding the termination of his services. It is also admitted by the Opponent that they received communication dated 27-10-2021 from ALC, Mapusa seeking to file their comments

and to attend discussion on the claim raised by the Applicant. The Opponent/Party II in their reply dated 10-11-2021 filed before the ALC, Mapusa raised preliminary objections stating that the Applicant is not a 'workman', as such, not covered under the provisions of the Industrial Disputes Act, 1947 to which the Applicant filed his Rejoinder taking a stand that he is the 'workman'. The rest of the contents of the Application are denied by the Opponent/Party II.

12. In the Rejoinder filed, the Applicant reiterated and maintained his stand that he is a 'workman' as defined under the Act and has approached this Tribunal for redressal of the dispute raised by him before the Conciliation Officer and that this Tribunal has the jurisdiction to adjudicate the same.

13. Considering the Claim Statement of the Applicant/Party I, the Written Statement filed by the Opponent/Party II and the Rejoinder on behalf of the Applicants/Party I, following issues at Exhibit 8 were framed on 03-10-2022. That for the sake of convenience the issues framed are re-arranged as under:

ISSUES

1. (Reframed Issue No. 4): Does the Applicant/Party I prove that he is a 'workman'?
2. Does the Applicant/Party I prove that the complaint is maintainable under Section 2-A(2) of the Industrial Disputes Act, 1947?
3. Does the Opponent/Party II prove that the Applicant/Party I was terminated as per terms of contract?
4. Does the Opponent/Party II prove that the termination of the services of the Applicant/Party I with effect from 23-09-2021 by Order dated 28-09-2021 is legal and justified?

14. Both the Parties led evidence to prove the issues as above framed by this Tribunal. Heard arguments advanced by Ld. Adv. A. Kundaikar for the Applicant and Learned Adv. Shri A. Shirodkar for the Opponent/Party II.

15. This Tribunal has taken note of the fact that the Hon'ble High Court of Bombay at Goa has allowed the Writ Petition No. 1030 of 2023 filed by the Applicant/Petitioner against the Opponent/Respondent challenging the order dated 23-03-2023 passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court and has set aside the Order of the Tribunal with a direction to this Tribunal to decide the application for interim relief preferred by the Petitioner on merits within a period of 3 months from the date of receipt of this Order.

16. I have gone through the records i.e. the pleadings, the oral as well as documentary evidence adduced by both the Parties as well as the oral arguments advanced by both the Parties and after considering the same my findings on the issues with reasons are as follows:

Issue No. 1 : In the affirmative.

Issue No. 2 : In the affirmative.

Issue No. 3 : In the negative.

Issue No. 4 : In the negative.

REASONS

17. *Issue No. 1:* It is in the evidence of the Applicant/Shri Ajit Shirodkar that he was employed with the Opponent/Party II vide Appointment Letter dated 24-12-1993 as a 'Time Keeper'. His salary was revised from time to time and the designation was also changed from time to time, however, the services rendered by him were the same. During his service of 25 years with the Opponent, he was not issued any memorandum or a charge-sheet and had an honest and unblemished service record. His last drawn salary was Rs. 33,530/-.

18. To substantiate the above fact, the Applicant relied upon the Letter of Appointment at Exh. 29. As per the said Letter of Appointment, the Applicant was appointed as a 'Trainee Time Keeper'. Therefore, the contention of the Opponent/Party II that the Applicant was appointed in the services of the Opponent/Party II as lowest managerial cadre Grade-VI is devoid of any substance nor the same has been supported by any documentary evidence. Further, it is the case of the Opponent/Party II that the Applicant was promoted in the Management Cadre as a Junior HR-Executive and was paid gross salary of Rs. 6,880/-. He was given the letter of appointment under promotion by which he accepted the terms of his employment. That by letter dated 10-07-2007, the Applicant accepted the terms and conditions stated therein and accordingly was promoted to the post of Sr. HR-Executive and was paid total salary of Rs. 8,108/- in addition to other allowances. The above contention of the Opponent/Party II has been sought to be dislodged by the Applicant on the basis of the letters of salary revision issued to him by the Opponent/Party II produced on record at Exh. 23 Colly. By these letters, though the salary component of the Applicant has been revised periodically, however, all the other terms and conditions of the employment are said to have remained unchanged. The last such letter issued to the Applicant in respect of revision of his salary by way of annual increment w.e.f. 1st April, 2018 and the letter is

dated 1st September, 2018 at Exh. 23 Colly. At the bottom of this letter, it is specifically mentioned that all other mutually agreed appointment terms and conditions of the Applicant shall remain unchanged.

19. The Applicant in his cross-examination maintained and reiterated his statement that in the absence of Deepali Parab who was the Asst. HR-Manager, he would not sign or sanction any leave application and leave application was sent to the General Manager. Thus, the Applicant throughout has taken a stand that since the date of his appointment he was not discharging any supervisory duty and was discharging the duties as per the instruction of his higher authority and had to report to the HR-Manager and that he did not sanction any leave to any of the Staff and his leave was sanctioned by the HR-Manager.

20. The Opponent/Party II on the other hand in support of their stand that the Applicant was performing the managerial duties and that he was not the 'workman' as defined under the Industrial Disputes Act, 1947 has placed reliance on Exh. 22 i.e. the Position Summary whereby the Applicant has been titled as Sr. Human Resource Executive and according to the Opponent/Party II, this Position Summary describes the HR-Executive duties and responsibilities which Position Summary has been received by the Applicant. As such, it is the contention of the Opponent/Party II that the Applicant was assigned responsibilities in terms of summary which was from time to time updated for various managerial positions in the establishment. The Position Summary for the post of Sr. Human Resource Executive was last updated and the duties and responsibilities assigned to the Applicant set out therein as a job description which was communicated to the Applicant in writing on 19-08-2021. The Opponent states that according to the Position Summary, the Applicant was responsible for supporting the operations of HR Team on day-to-day basis by executing the establishment's Talent Development Strategy and by implementing the hotel training programmes and was also assigned duties more specifically awarded in the said written communication dated 19-08-2021.

21. Be that as it may, the witness of the Opponent/Party II, Ms. Harsha Arlekar in her cross-examination categorically admitted that as per their own document, Applicant left services on 21-08-2021 and that his services were terminated on 23-09-2021. She has further admitted the Employer having not produced any document to show that the Applicant was working as Executive

after he has been served with the Summary Position on 19-08-2021. She further admits that as per the Report Card the Applicant was absent on 19-08-2021 and that he was present only on 17-08-2021 and 18-08-2021. If the Applicant was absent on 19-08-2021, then how is that he has received the Position Summary on 19-08-2021 is the question that remains unanswered. Further, presuming without admitting that the Position Summary was served on the Applicant on 19-08-2021, then the next question arises as to whether the Applicant actually discharged the services more particularly described in the said Position Summary as that of HR-Executive when the witness of the Opponent categorically admitted that he left the services on 21-08-2021. There is absolutely no evidence on record that the Applicant discharged his managerial duty on 20-08-2021 onwards when it is their own case that he left services on 21-08-2021. The Opponent/Party II has thus demolished their own case and has failed to show that the Applicant has actually performed any managerial duties pursuant to the Position Summary served on him 19-08-2021. That apart, whether the Position Summary was actually served to the Applicant, this aspect also has created doubt as the Opponent/Party II at one hand says that the Applicant was absent on 19-08-2021 and with the same breath says that he was served with the Summary Position on the same day i. e., on 19-08-2021.

22. The witness of the Opponent/Party II in her cross-examination has categorically admitted they having not produced any document from the date of the promotion of the Applicant to 19-08-2021 to show that the Applicant was performing his duty as stated in Exh. 22. On the other hand the Applicant/Party I substantially and by way of sufficient documentary evidence could prove that he was employed with the Opponent/Party II and the nature of the services rendered by him were those which comes within the category of the services being rendered by a 'workman' although he was paid a salary of more than Rs. 10,000/- a month and that there was periodic revision in his salary and the last gross salary drawn by him was Rs. 33,530/-. Therefore, the issue No. 1 stands answered in the affirmative.

23. *Issue No. 2:* The Opponent/Party II in the Written Statement filed by them have stated that on account of continuous and unauthorized absence of the Applicant disrupted the smooth functioning of the Human Resource Department and was considered as an act subversive of discipline. As

such, the Management decided to terminate the services of the Applicant and accordingly his services were terminated by notice dated 28-09-2021. The Opponent/Party II however accepted the Applicant having raised the dispute before the Commissioner, Labour and Employment regarding the termination of his services. It is also admitted by the Opponent that they received communication dated 27-10-2021 from ALC, Mapusa seeking to file their comments and to attend discussion on the claim raised by the Applicant.

24. Ld. Adv. Shri Shirodkar submitted that the Applicant did not raise the dispute with the Management pursuant to the termination of his services by the Opponent/Party II. Being so, there was no industrial dispute between the Applicant/Party I and the Opponent/Party II and as such the application filed by the Applicant is not maintainable and thus this Tribunal lacks jurisdiction to try this present matter. Section 2A(2) of the Industrial Disputes Act reads as under:

Notwithstanding anything contained in Section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

25. The amended Section 2A(2) thus provides a platform to an individual workman to raise his independent dispute by making an application directly to the Labour Court or Tribunal for adjudication of the dispute referred therein after the expiry of 45 days from the date he makes an application to the Conciliation Officer of the appropriate Government for conciliation of the dispute. This Section nowhere emphasis a need to raise a dispute with the Management first. The fact that the Opponent/Party II accepted they having received the notice from the Conciliation Officer for the purpose of conciliation of the dispute raised by the Applicant in his application is sufficient for the Applicant to approach this Tribunal upon the expiry of 45 days as stipulated in Section 2A(2) of the Act.

There is no dispute over the fact that the present application has been filed after the expiry of 45 days from the date of the application filed before the Conciliation Officer. In view of this, the observation made in the case of **Sindhu Resettlement** (Supra) “...thus, both the respondents in their claims put forward before the management of the Appellant, requested for payment of retrenchment compensation and did not raise any dispute for reinstatement. Since no such dispute about reinstatement was raised by either of the respondents before the management of the Appellant, it is clear that the State Government was not competent to refer a question of reinstatement as an industrial dispute for adjudication by the Tribunal. The dispute that the State Government could have referred competently was the dispute relating to payment of retrenchment compensation by the Appellant to Respondent No. 3 which had been refused. No doubt, the order of the State Government making the reference mentions that the Government had considered the report submitted by the Conciliation Officer under sub-section (4) of Section 12 of the Industrial Disputes Act, in respect of the dispute between the appellant and workmen employed under it over the demand mentioned in the Schedule appended to that order; and, in the Schedule, the Government mentioned that the dispute was that of reinstatement of Respondent No. 3 in the service of the appellant and payment of his wages from 21st February, 1958. It was urged, by Mr. Gopalakrishnan on behalf of the respondents that this Court cannot examine whether the Government, in forming its opinion that an industrial dispute exists, came to its view correctly or incorrectly on the material before it” would be of no help to the Opponent/Party II to make the preliminary objection raised by him sustainable. The Applicant/Party I therefore has proved that the complaint is maintainable under Section 2-A(2) of the Industrial Disputes Act, 1947. As such this issue stands answered in the affirmative.

26. Issue No. 3: According to Opponent/Party II the services of the Applicant were terminated on the basis of the Service Contract as the Applicant was not a ‘workman’ as defined under the Industrial Disputes Act, 1947. When asked in the cross-examination whether they have produced the said Service Contract by virtue of which the Opponent/Party II claimed that the services of the Applicant were terminated, the witness clearly stated that she does not have such copy of a Contract. Thus, it is a matter of record that the Opponent/Party II though have taken a ground of they terminating the services of the Applicant on the basis of Service Contract, however, no document to that effect to substantiate their above stand has been produced on record. As such for want of sufficient evidence, this Issue stands answered in the negative.

27. *Issue No. 4:* It is the Applicant's case that on 28-09-2021 the Applicant was issued with the Termination Letter terminating his services w.e.f. 23-09-2021. The Applicant was governed under Shops and Establishment Act and was a 'workman' however, no departmental inquiry was held before terminating his services neither a charge-sheet was issued to him and there was no any departmental inquiry conducted before terminating him from the services. The termination of service therefore, was in violation of principles of natural justice, claimed the Applicant.

28. In the Written Statement, the Opponent/Party II has stated that the continuous and unauthorized absenteeism of the Applicant disrupted the smooth functioning of the Human Resource Department and was considered as an act subversive of discipline. As such, the Management decided to terminate the services of the Applicant and accordingly his services were terminated by notice dated 28-09-2021. The plain reading of the statements above shows certain acts of misconduct being committed by the Applicant while he was in service of the Opponent/Party II. If this was the case, then the Opponent/Party II ought to have issued to the Applicant a show-cause or a charge-sheet giving him an opportunity to explain his unauthorized absenteeism. As per Exh. 18, which is the Performance Appraisal of the Applicant, the charges/misconduct that have been ticked mark are tardiness, impoliteness to colleagues, negligence in performing job duties, un-cooperative, poor or unsatisfactory work performance, refusal/failure to follow job requirements, disobedience to Superiors. The punishment which has been ticked mark in the column of action to be taken is second/final written warning. The charges stated in the Written Statement and those ticked marked in the Performance Appraisal are totally distinct. The punishment prescribed is only the second/final written warning. The Applicant however has been directly terminated from the services without giving any Warning Letter in terms of the Performance Appraisal at Exh. 18 nor the Applicant has been served with the show-cause notice or has been issued a charge-sheet in the alleged misconduct by the Opponent/Party II. Moreover, the Applicant till today has not been paid his full and final legal settlement dues and other terminal benefits by Opponent/Party II though stated in the Written Statement that the Opponent/Party II is ready to pay by depositing the same before this Tribunal or is willing to hand over the cheques to the Applicant without prejudice to their contentions that this Tribunal lacks jurisdiction to decide the present matter.

29. In the case of **S. K. International a Partnership Firm** (Supra) it is held that *"the services of the Respondent No. 1 are terminated on moral ground, without mentioning the nature of alleged misconduct. In the absence of appropriate disciplinary inquiry to establish the misconduct or in the absence of adducing any evidence before the Labour Court to justify the termination on the ground of moral turpitude, the termination of services of the Respondent No. 1 is in breach of mandate contained in Section 25-F of the Act, 1947 and can be said to be wholly illegal. The reference was made assailing the illegal termination and seeking reinstatement in service with continuity of service and back wages. The residuary relief Clause (f) in the Statement of Claim is elastic enough to subsume in its fold the prayer for re-instatement, even though there was no specific final prayer of reinstatement in the Claim. No endeavor was made to establish the misconduct before the Labour Court by the Petitioners. This act leads to arbitrary and an act of victimization justifying reinstatement in service with back wages. So far as the back wages are concerned, the Respondent No. 1 has discharged initial burden by affirming in the Statement of Claim as well as in the Affidavit of evidence that after the termination he has not been able to secure any employment despite the best efforts. It is not the case of the employer that Respondent No. 1 has been working with a particular employer. It was for the employer to demonstrate that Respondent No.1 has been gainfully employed which is not fulfilled. The Respondent No. 1 as permanent worker has rendered five years' service. It is not the claim of the Petitioner that the work which the Respondent No. 1 was discharging is not available. The Respondent No. 1 has been out of employment for more than four years. In the totality of the circumstances to meet the ends of justice the impugned Award stands modified. Direction to reinstate the Respondent No. 1 in service with continuity of service w.e.f. 2nd April, 2019 stands confirmed. The Petitioner is directed to pay 70% of the back wages computed at the last drawn wages w.e.f. 24th April, 2019 instead of full back wages ordered by the Labour Court.*

It is a tried law that even where the services of an employee are terminated by the Employer without resorting to a disciplinary enquiry, when a termination is challenged before the Labour Court/Industrial Tribunal, the employer has a right to justify the termination by establishing misconduct before the Court/Tribunal. In the instant case, the Labour Court found that the employer had not made a serious endeavor to justify the termination by adducing evidence in support thereof before the Labour Court.

Before adverting to consider the legality and correctness of this finding, it may be appropriate to deal with the preliminary challenge to the award on the ground that the Respondent No. 1 was not a workman within the meaning of Section 2(s) of the Act, 1947. An endeavor was made on behalf of the Petitioners to draw home the point that the Respondent No. 1 was not a workman as he was discharging supervisory functions. The learned Presiding Officer was of the view that the designation of the post was not decisive. The Employer failed to adduce any evidence to show that the Respondent No. 1 was discharging supervisory functions, neither the Respondent No. 1 supervised the work of any other employee, not the Respondent No. 1 was vested with any independent decision making power. Whether the aforesaid approach of the learned Presiding Labour Court is justifiable?

On the aspect of determination of status of workmen, within the nature of the meaning of Section 2(s) of the Industrial Disputes Act, 1947, the legal position is fairly crystalized. Such determination must be based on the appreciation duties performed by the employee. Nomenclature of the post, which the employee holds, is not of decisive significance. The description of the nature of the duties also does not furnish a surer foundation for determination. Use of grand-standing expressions and management jargon to describe otherwise ordinary and normal functions, is not uncommon. It is, therefore, necessary to correctly appreciate the nature of the core duties discharged by a person whose status is questioned.

Section 2(s) of the Industrial Disputes Act, 1947 defines the expression 'workman' to mean any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. In the case of **H. R. Adyanthaya and Ors. V. Sandoz (India) Ltd., 1994 II CLR 552 (S.C.): (1994) SCC 737** the Constitution Bench of the Supreme Court enunciated "that to be qualified to be workman under Section 2(s), the person must be employed to do the work which falls in any of the specified categories, manual, unskilled, skilled, technical, operational, clerical or supervisory. To put in, in other words, it is not enough that a person is not covered by any of the four exceptions to the definition. It is also fairly well settled that the burden is on the person, who asserts the status of the workman under S. 2(s) to establish with reference to the dominant nature of his duties that the work which the said person performs falls within one of the specified categories under S. 2(s) of the Act, 1947.

30. In the case of **Arkal Govind Raj Rao v. CIBA Geigy and India Ltd., (1985) 3 SCC 371**, another three-judge Bench of the Supreme Court re-exposed the principle in the following words:

"where an employee has multifarious duties and a question is raised whether he is a workman or someone other than a workman the Court must find out what are the primary and basic duties of the person concerned and if he is incidentally asked to do some other work, may not necessarily be in tune with the basic duties, these additional duties cannot change the character and status of the person concerned. In other words, the dominant purpose of employment must be taken into consideration and the gloss of some additional duties must be rejected while determining the status and character of the person.

The determinative factor is the main duties of the employee concerned and not some works incidentally done. In other words, what is, in substance, the work which employee does or what in substance he is employed to do. Viewed from this angle, if the employee is mainly doing supervisory work but incidentally or for a fraction of time also does some manual or clerical work, the employee should be held to be doing supervisory works. Conversely, if the main work is of manual, clerical or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally or only a small fraction of working time is devoted to some supervisory works, the employee will come within the purview of 'workman' as defined in Section 2(s) of the Industrial Disputes Act.

The aforesaid enunciation indicates that it is the dominant nature of work or duties which determines the status and not the incidental work, which an employee may be called upon to perform. Herein lies the task before the industrial adjudicator or Court to decipher the dominant nature of duties and remove the gloss. Often the industrial adjudicator and Court come across a verbose and labyrinth description of the duties. Still an effort is warranted to remove the gloss and find out the dominant nature of the duties.

In the case of **Hindustan Tin Works (P) Ltd. v/s employees, (1979) 2 SCC 80** a three Judge Bench of the Supreme Court postulated the criteria for grant of back wages where the termination has been held to be illegal. It was, inter alia, observed that: "It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the

gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when the relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz., to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages ..."

The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing order, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

It is, undoubtedly, true when the question arises as to whether the back wages is to be given and as to what is to be the extent of back wages, these are matters which will depend on the facts of the case as noted in *Deepali Gundu Surwase* (supra). In a case where it is found that the employee was not at all at fault and yet, he was visited with illegal termination or termination which is actually activated by malice, it may be unfair to deny him the fruits of the employment which he would have enjoyed but for the illegal/malafide termination. The nature of the charges, the exact reason for the termination as evaluated and, of course, the question as to whether the employee was gainfully employed would be matters which will enter into the consideration by the Court".

31. In the case of **Raghubir Singh V/ G. M. Haryana Roadways, Hissar S.C.523**, it has been held that "Now, it is necessary for this Court to examine another aspect of the case on hand, whether the Appellant is entitled for reinstatement, back wages and the other consequential benefits. In the case of **Deepali Gundu Surwase v/s Kranti Junior Adhyapak Mahavidyalaya (D. Ed) and Ors. 2014 II CLR 813 S.C.**, this Court opined as under:-

*"The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. with the passing of an order which has the effect of the employer-employee relationship, the latter source gets dried up, not only the concerned employee but the entire family suffers great adversities. In the case of **Kumar Verma v/s Central Govt, Industrial Tribunal cum Labour Court** it is held "plain common sense dictates that the removal of an order terminating the services of the workman must ordinarily lead to the re-instatement of the services of the workman. That the relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. It is true occasional hardship may be caused to an employer but more often than not comparatively far greater hardship is certain to be caused to the workman if the relief is denied."*

32. In the case in hand, the Applicant/Party I has conclusively proved that he is the 'workman' within the ambit of the definition of 'workman' as defined under the Act and further proved that his services have been terminated illegally and unjustifiably without resorting to the principles of natural justice w.e.f. 23-09-2021 by Order dated 28-09-2021. Therefore, in contextual circumstances, the Applicant/Party I workman is entitled to be reinstated in the services of the Opponent/Party II for which I am to answer that the Issue No. 4 is answered in the negative.

Hence the following Order:

ORDER

1. The Application stands allowed. Consequently, the termination Order dated 28-09-2021 issued to the Applicant/Party I by the Opponent/Party II stands set aside.

2. The Employer/Party II is directed to pay to the Applicant/Party I his full back wages from the date of retrenchment till he is re-instated back in the services of the Opponent/Party II.

(i) Inform the Government accordingly.

Sd/-

(Vijayalaxmi Shivolkar),
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court.

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Department of Public Health

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Order

No. 7/4/2003-I/PHD/Part-I/167

On the recommendation of the Goa Public Service Commission as conveyed vide letter No. COM/II/11/56(2)/2024/369 dated 15-01-2025, the Government is pleased to promote the following Assistant Drugs Controller to the post of Deputy Director in the Directorate of Food & Drugs Administration on regular basis in the Level 11 of Pay Matrix of 7th Pay Commission [PB-3: Rs. 15600-39100+GP: Rs. 6,600/- (pre-revised)] and other allowances to be fixed as per rules with immediate effect:-

1. Smt. Swati V. Bhonsule alias Swati G. Lad.

By order and in the name of the Governor of Goa.

Dr. Pooja Madkaikar, Under Secretary (Health-II).
Porvorim, 31st January, 2025.

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Notification

No. 22/5/2015-I/PHD/Part/149

Read: Notification No. 22/5/2015-I/PHD/Part/709 dated 10-05-2023.

In partial modification to the Government Notification read in the preamble, the Government of Goa has filled the vacant posts.

In view of above, the constitution of the council is as follows:

- | | | |
|--|---|--------------------|
| 1. Director of Health Services | — | Ex officio Member. |
| 2. Dean, Goa Medical College | — | Ex officio Member. |
| 3. Dr. Wilson Fernandes, Principal, Institute of Nursing Education, Bambolim-Goa | — | Member. |

4. Oslinda Clara Fernandes, Ward Incharge, Goa Medical College, Bambolim-Goa

5. Rekha Naik, Matron, MPT, Headland Sada-Goa — Member.

6. Helena Monteiro, Ward Incharge, Institute of Psychiatry & Human Behavior — Member.

7. Vandana Dessai, Ward Incharge, Hospicio Hospital, Margao, South Goa — Member.

8. Mrs. Lisma Borges Barnetto, Public Health Nurse, Primary Health Centre, Cortalim — Member.

9. S. Rajeswari, Professor-cum-Principal, Vrundavan Institute of Nursing Education, Colvale-Goa — Member.

10. Geeta Sawal, Auxiliary Nurse-Midwife, Primary Health Centre, Aldona, Sub-Centre, Boatora-Goa — Member.

11. Miss Ekta Karkal, Tutor, Institute of Nursing Education, Bambolim-Goa — Member.

12. Mrs. Ankita Patil, Staff Nurse (Teaching Faculty), Institute of Nursing Education — Member.

13. Pratap S. Parab, TNAI Member, Ward Incharge (OT), Goa Medical College, Bambolim, Secretary, TNAI, Goa Branch — Member.

14. Mrs. Clemy D'souza, Ward Incharge, North Goa District Hospital, Mapusa-Goa — Member.

By order and in the name of the Governor of Goa.

Dr. Pooja Madkaikar, Under Secretary (Health-II).
Porvorim, 28th January, 2025.

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Department of Urban Development

(Municipal Administration)

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Notification

No. 10/369/2018-DMA/Part/3198

As per the National Policy on Urban Street Vendors, 2009 and subsequent notification of the

Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (Central Act 7 of 2014), and Goa Street Vendors (Protection of Livelihood and Regulation of Street Vending) Rules, 2016 the following Town Vending Committee has been constituted by the Urban Local Bodies to protect the livelihood of street vendors:-

Sr. No.	Ponda Municipal Council	Designation
1	2	3
1.	Chief Officer, Ponda Municipal Council	Chairperson.
2.	Chairperson, Ponda Municipal Council	Member.
3.	Shri Rupak Desai, Councillor & Member of Local Authority	Member.
4.	Smt. Jyoti A. Naik, Councillor & Member of Local Authority	Member.
5.	Collector or his representative	Member.
6.	Chairman of Planning & Development Authority or his representative	Member.
7.	Chief Traffic Police or their representative	Member.
8.	Police Inspector, Ponda Police Station or their representative	Member.
9.	Amchi Vyapari Sanghatana, representative of Municipal Market Association	Member.
10.	Ponda Business & Professional Forum, representative of Trade Association	Member.
11.	Nari Shakti/Asara Foundation Trust, representative of NGO	Member.
12.	Rotaract Club of Ponda, representative of NGO	Member.
13.	Green Army Foundation Community Based Organization representative of (CBO)	Member.
14.	Rajangan Co-op. Housing Society, Ponda, representative of Resident Welfare Association (RWA)	Member.

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15.	Ponda Gharkul Co-op. Housing Society Ltd., representative of Resident Welfare Association (RWA)	Member.
16.	IDBI Bank representative of Lead Bank of Ponda City	Member.
17.	Vaishnavi V. Shet, female (General), representative of Street Vendors Association	Member.
18.	Mumtaz A. Khan, female (General), representative of Street Vendors Association	Member.
19.	Jyoti S. Dhekne, female (General), representative of Street Vendors Association	Member.
20.	Priya Arvind Naik, female (OBC), representative of Street Vendors Association	Member.
21.	Shambhu S. Naik, male (OBC), representative of Street Vendors Association	Member.
22.	Vishwanath Yedvi, male (General), representative of Street Vendors Association	Member.
23.	Maruti Narvekar, male (General), representative of Street Vendors Association	Member.
24.	Pramad J. Shrivant, male (OBC), representative of Street Vendors Association	Member.
25.	Pareesh Ramesh Mamletdar, male (OBC), representative of Street Vendors Association	Member.
26.	Sonu Rama Gaude, male (ST), representative of Street Vendors Association	Member.
27.	Maruti Rama Tendulkar, male (ST), representative of Street Vendors Association	Member.

Brijesh Manerkar, Director (Municipal Administration/Urban Development) & ex officio Joint Secretary.

Panaji, 29th January, 2025.

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